

Short Title: GSC Good Funds Settlement/Technical Amends.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A SETTLEMENT AGENT MAY DISBURSE SETTLEMENT
PROCEEDS IN RELIANCE ON A CHECK DRAWN ON THE ACCOUNT OF OR
ISSUED BY A LICENSED MORTGAGE LENDER AND TO MAKE TECHNICAL
AMENDMENTS TO **VARIOUS LAWS REGULATING FINANCIAL PRACTICES.**

The General Assembly of North Carolina enacts:

PART I. GOOD FUNDS SETTLEMENT ACT AMENDMENTS

SECTION 1. G.S. 45A-4 reads as rewritten:

"§ 45A-4. Duty of settlement agent.

(a) The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. A settlement agent may disburse funds from the settlement agent's trust or escrow account (to either the applicable register of deeds or directly to a private company authorized to electronically record documents with the office of the register of deeds) as necessary to record any deeds, deeds of trust, and any other documents required to be filed in connection with the closing, including excise tax (revenue stamps) and recording fees, but the settlement agent ~~may~~ shall not disburse any other funds from its trust or escrow account until the deeds, deeds of trust, and other required loan documents have been recorded in the office of the register of deeds. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not

constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

- (1) A certified ~~check~~; check.
- (2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit ~~association~~; association.
- (3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state ~~government~~; government.
- (4) A check drawn on the trust account of an attorney licensed to practice in ~~the State of North Carolina~~; Carolina.
- (5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General ~~Statutes~~; Statutes.
- (6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars (\$5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow ~~account~~; account.
- (7) A check drawn on the account of or issued by a mortgage ~~banker~~ lender licensed under Article ~~19A-19B~~ of Chapter 53 of the General ~~Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars (\$300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of~~

~~any settlement agent with a claim against the licensee for a dishonored check.~~
Statutes.

(b) If the settlement agent receives information from the lender as provided in G.S. 45A-5(b) or otherwise has actual knowledge that a mortgage broker or other person acted as a mortgage broker in the origination of the loan, the settlement agent shall place an entry on page 1 of the deed of trust showing the name of the mortgage broker or other person ~~who~~ that acted as a mortgage broker in the origination of the loan. Information pertaining to the identity of the mortgage broker or other person ~~who~~ that acted as a mortgage broker in the origination of the loan ~~shall not be considered~~ is not confidential information. The ~~terms~~ term "mortgage broker" and ~~"act as a mortgage broker"~~ shall have has the same meaning as provided in ~~G.S. 53-243.01, G.S. 53-244.030."~~

PART II. TECHNICAL AMENDMENTS TO VARIOUS LAWS REGULATING FINANCIAL PRACTICES

SECTION 2. G.S. 53-249 reads as rewritten:

"§ 53-249. Filing and posting of loan fees; disclosures.

(a) Filing of Fee ~~Schedule.~~ Schedule. — On or before January 2 of each year, each registrant shall file with the Commissioner a schedule of the refund anticipation loan fees for refund anticipation loans to be facilitated by the registrant during the succeeding year. Immediately upon learning of any change in the refund anticipation loan fee for that year, the registrant shall file an amendment with the Commissioner setting out the change. Filing is effective upon receipt by the Commissioner.

(b) Notice of Unconscionable ~~Fee.~~ Fee. — If the Commissioner finds that a refund anticipation loan fee filed pursuant to subsection (a) of this section is unconscionable, ~~he~~ the Commissioner shall notify the registrant that (i) ~~in his opinion~~ the fee is unconscionable and (ii)

the consequences of charging a refund anticipation loan fee in an amount that the Commissioner has notified the registrant is unconscionable include liability to the debtor for three times the amount of that fee and possible revocation of registration as a facilitator after notice and a hearing.

(c) ~~Posting of Fee Schedule.~~ Schedule. – Every registrant shall prominently display at each office where the registrant is facilitating refund anticipation loans a schedule showing the current refund anticipation loan fees for refund anticipation loans facilitated at the office and the current electronic filing fees for the electronic filing of the taxpayer's tax return. Every registrant shall also prominently display on each fee schedule a statement to the effect that the taxpayer may have the tax return filed electronically without also obtaining a refund anticipation loan. No registrant may facilitate a refund anticipation loan unless (i) the schedule required by this subsection is displayed and (ii) the refund anticipation loan fee actually charged is the same as the fee displayed on the schedule and the fee filed with the Commissioner pursuant to subsection ~~(a).~~ (a) of this section.

(d) ~~Disclosures.~~ Disclosures. – At the time a debtor applies for a refund anticipation loan, the registrant shall disclose to the debtor on a form separate from the application:

- (1) ~~The fee for the loan.~~ refund anticipation loan fee.
- (2) The fee for electronic filing of a tax return.
- (3) The time within which the proceeds of the loan will be paid to the debtor if the loan is approved.
- (4) That the debtor is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.
- (5) The availability of electronic filing of the taxpayer's tax return, along with the average time announced by the appropriate taxing authority within which a

taxpayer can expect to receive a refund if the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.

- (6) Examples of the annual percentage rates, as defined by the Truth In Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. Section 226.22, for refund anticipation loans of five hundred dollars (\$500.00), seven hundred fifty dollars (\$750.00), one thousand dollars (\$1,000), one thousand five hundred dollars (\$1,500), two thousand dollars (\$2,000), and three thousand dollars (\$3,000). Regardless of disclosures of the annual percentage rate required by the Truth In Lending Act, if the debtor is required to establish or maintain a deposit account with the creditor for receipt of the debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of determining the annual percentage rate disclosure under this section shall be assumed to be the estimated date when the tax refund will be deposited in the debtor's account."

SECTION 3. G.S. 53-258 reads as rewritten:

"§ 53-258. Authority and procedures governing reverse mortgage loans.

(a) Except as provided in subsection (b1) of this section, no person, firm, or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized reverse mortgage lender by the Commissioner. Mortgage lenders licensed under Article ~~19A~~19B of this Chapter must also be authorized under this Article before making reverse mortgage loans.

(b) An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are

required by the Commissioner. The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred dollars (\$500.00).

(b1) Each of the following lenders shall be considered authorized to engage in the business of making reverse mortgage loans without being required to apply pursuant to subsection (b) of this section and may represent to the public that it is so authorized:

(1) The North Carolina Housing Finance Agency.

(2) A bank, savings institution, or credit union formed under the laws of this or any other state or of the United States.

(3) A wholly owned subsidiary of an entity described in subdivision (2) of this subsection.

Each lender listed in this subsection may, upon written request to the ~~Commissioner of Banks,~~ Commissioner, obtain written confirmation of its authority to engage in the business of making reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3) of this subsection, the request shall be accompanied by the fee set forth in subsection (d) of this section.

(c) Repealed by Session Laws 2004-171, s. 16, effective October 1, 2004, and applicable to acts occurring and transactions or agreements entered into on or after that date.

(d) The Commissioner shall, upon determination that an applicant should be authorized to make reverse mortgage loans, issue notice of this authority to the lender. The authority to issue reverse mortgage loans is valid for the period of time specified by the Commissioner. A lender to whom a notice of authority is issued shall display the notice prominently in any and all offices of the lender that make reverse mortgage loans. Authorizations issued under this section are nontransferable. Except for lenders described in subsection (b1) of this section, each lender to which an authorization is issued shall pay an annual renewal fee of two hundred fifty dollars (\$250.00)."

SECTION 4. G.S. 53-277 reads as rewritten:

"§ 53-277. Exemptions.

(a) This Article ~~shall~~does not apply to: to any of the following:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state;~~ and state.

(2) Any person or entity principally engaged in the bona fide retail sale of goods or ~~services, who~~ services that, either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other ~~consideration, where not more than two dollars (\$2.00) is charged for the~~ service; consideration and charges no more than two dollars (\$2.00) for the service.

(b) A person licensed under Article ~~16A-16B~~ of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an authorized ~~agent~~ delegate of a person licensed under Article ~~16A-16B~~ of this Chapter."

SECTION 5. G.S. 53-366 reads as rewritten:

"§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust company.

(a) Except as otherwise provided in this Article, the following provisions of this Chapter and Chapter 53C of the General Statutes ~~shall~~ apply to authorized trust institutions:

(1), (2) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(3) G.S. 53C-7-205.

(4) through (6) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(7) Article 8 of Chapter 53C of the General Statutes, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article ~~shall~~ apply in lieu of of the following provisions:

- a. G.S. 53C-8-2.
- b. G.S. 53C-8-3.
- c. G.S. 53C-8-17.

(8), (9) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(10) Article 14 of this Chapter.

(11) G.S. 53C-2-7(b).

(b) Rules adopted by the Commissioner to implement those provisions of this Chapter made applicable to authorized trust institutions by subsection (a) of this section also ~~shall~~ apply to authorized trust institutions unless the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to trust business or trust marketing.

(c) Activities of authorized trust institutions for clients shall not be considered ~~the sale or issuance of checks~~ money transmission under Article ~~46-16~~ 16B of Chapter 53 of the General Statutes.

(d) Until the Commissioner has issued new rules governing State trust companies, State trust companies ~~shall be~~ are governed by rules issued by the Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to the business of a State trust company.

(e) Notwithstanding any other provision of this Chapter, a State trust ~~company~~ company is deemed to be all of the following:

(1) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(2) ~~Is a~~ A "bank" for purposes of laws made applicable to authorized trust institutions in this section and for purposes of G.S. 53-277.

(3) ~~Is a~~ A trust company organized and doing business under the laws of ~~the State~~ of North Carolina, a substantial part of the business of which is exercising fiduciary powers similar to those permitted national banks under authority of the Comptroller of the Currency, and ~~which is subject by law to supervision and examination by the Commissioner as a banking institution; and~~ Commissioner.

(4) ~~Is a~~ A financial institution similar to a bank.

(f) In the case of a State trust company controlled by a company that has declared itself to be a "financial holding company" under ~~12 U.S.C. § 1843(l)(1)(C)(i), 12 U.S.C. § 1843(l)(1)(D)(i),~~ deposits held for an account ~~shall be~~ are deemed to be "trust funds" within the meaning of 12 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are explicitly disclaimed. This subsection does not prescribe the nature or extend the scope of any fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits held for accounts ~~shall be~~ are as provided by the instruments and laws applicable to those accounts.

(g) Subject to any limitations contained in this Article, an authorized trust institution is a "trust ~~company~~", company, a "corporate ~~trustee~~", trustee, a "corporate ~~fiduciary~~", fiduciary, and a "corporation acting in a fiduciary ~~capacity~~", capacity, as ~~such these~~ and similar terms are used in the General Statutes, except where it clearly appears from the context in which those terms are used that a different meaning is intended."

SECTION 6. G.S. 66-106 reads as rewritten:

"§ 66-106. Definitions.

(a) For purposes of this ~~Article~~ Article, the following definitions apply:

(1) ~~A "loan broker" is any person, firm, or corporation who, in return for any consideration from any person, promises to (i) procure for such person, or assist such person in procuring, a loan from any third party; or (ii) consider whether or not it will make a loan to such person.~~

~~(2)~~ (1) A "loan" is an agreement to advance money or property in return for the promise to make payments therefor, whether ~~such the~~ agreement is styled as a loan, credit card, line of credit, ~~a lease~~ lease, or otherwise.

(2) A "loan broker" is any person, firm, or corporation that, in return for any consideration from any person, promises to do any of the following:

a. Procure for the person, or assist the person in procuring, a loan from any third party.

b. Consider whether or not it will make a loan to the person. This sub-subdivision does not apply to a lender whose loans or advances to any person in North Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar year.

(b) Except for residential mortgage loans as defined in G.S. 53-243.01, G.S. 53-244.030, this Article ~~shall~~ does not apply to any of the following:

(1) A party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association-Association, or any federal agency; agency.

(2) ~~not to any~~ A party currently designated and compensated by a North Carolina licensed insurance company as its agent to service loans it makes in this State;
State.

(3) ~~nor to any~~ An insurance company registered with and licensed by the North Carolina Insurance ~~Commissioner;~~ Commissioner.

(4) ~~nor, with~~ With respect to a residential mortgage ~~loans, to any loan, a~~ residential mortgage ~~banker~~ lender or mortgage broker licensed pursuant to Article ~~49A-19B~~ of Chapter 53 of the General Statutes or exempt from licensure pursuant to ~~G.S. 53-243.01(12) and G.S. 53-243.02;~~ G.S. 53-244.040(d).

(5) ~~nor to any~~ An attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which ~~such the~~ attorney-at-law, public accountant, or dealer is registered or licensed under the laws of ~~the State of~~ North Carolina. ~~Provided further that subdivision (1)(ii) above shall not apply to any lender whose loans or advances to any person, firm or corporation in North Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar year."~~

PART III. EFFECTIVE DATE

SECTION 7. This act is effective when it becomes law.